

THE HON'BLE SRI JUSTICE J.CHELAMESWAR
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.NO.5589 OF 2005

Date: .11.2005

Between:

1. The Commissioner of Prohibition & Excise, Govt. of A.P., Prohibition & Excise Complex, 1st Floor, Nampally, Hyderabad. And two others.

....Petitioners.

and

Sri A.Ramulu, Prohibition & Excise Inspector, O/o the Asst.Commissioner of Prohibition & Excise (Enforcement) Prohibition & Excise Complex, 5th Floor, Nampally, Hyderabad.

....Respondent.

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ORDE.R: (per Hon'ble Sri Ramesh Ranganathan, J)

The order of the A.P. Administrative Tribunal, in O.A.No. 5844 of 2004 dated 14.10.2004, in directing the petitioners to place the case of the respondent, along with others, before the departmental promotion committee, for being considered for promotion to the next higher post, in accordance with rules and as per his seniority, if he was otherwise eligible and found suitable and came within the zone of consideration, is impugned in this writ petition as illegal and without jurisdiction.

Facts, to the extent necessary for this writ petition, are that the respondent is a

Sub-Inspector of Excise (Enforcement), Hyderabad. The Assistant Commissioner of Prohibition & Excise, Medak District in his report dated 08.01.1998 stated that one Sri M.A. Raheem, P&EI, District Task Force, Medak along with respondent had conducted inspection at Jeedipalli and on finding that the toddy was adulterated with Chloralhydrate, three samples were drawn under the cover of panchanama for further analysis and the case papers and samples were handed over to the respondent for further investigation. On 15.10.1997, the respondent registered the case under Section 24 instead of Section 37(a) of APEA, 1968. On a surprise inspection, by the Assistant Commissioner of Prohibition & Excise, Medak District, of the Station House Office at Gajwel on 20.01.1998, the respondent was found absent from duty from 18.01.1998. The Station House Officer, Gajwel, had also submitted a report that the respondent was not obeying instructions of his superiors and had neglected his legitimate duties. The respondent was placed under suspension, under Rule 8(2)(a) of APCS (CCA) Rules, 1991, for his behaviour towards his superiors and for negligence in performing his duties. Pursuant to the orders of the A.P. Administrative Tribunal, in O.A.No.1325 of 1998 dated 20.03.1998, the respondent was reinstated into service vide proceedings dated 01.04.1998. The respondent was issued a charge memo on 01.12.1999 containing three charges for disobeying the orders of his superior officers, negligence in performance of his duties etc. On receipt of his explanation, remarks were called for from the Prohibition & Excise Superintendent, Medak, an enquiry was conducted, and on the Enquiry Officer holding that the charges alleged against the respondent had been proved beyond doubt, the respondent was issued show cause notice dated 12.02.2002 and, by order of the Deputy Commissioner dated 01.04.2004, the petitioner was inflicted the punishment of stoppage of two annual grade increments with cumulative effect. The petitioner preferred an appeal to the 1st respondent and, by order dated 14.09.2004, the punishment imposed on the petitioner was set aside.

The petitioner approached the A.P. Administrative Tribunal and, in O.A.No. 5844 of 2004, sought a direction to the respondents, (petitioners herein), to consider his case for promotion to the post of Inspector of Prohibition & Excise, after forwarding his name to the DPC, as the punishment imposed on him was not subsisting.

While both the Counsel for the applicant and the Government Pleader agreed before the Tribunal that the case could be disposed of finally at the admission stage, the Government Pleader stated that the applicant could make a representation to the concerned authorities. The A.P. Administrative Tribunal, took note of the fact that the respondent belongs to S.C. category and his case for promotion was required to be considered in terms of G.O.Ms.No. 5 S.W. (ROR-I) Department dated 14.02.2003, which provides for reservation in promotion. Since the punishment imposed against the respondent had been set aside, as no charge memo had been issued to him till date, and though the appellate authority had instructed that action be taken under Sub-rule 21(b) of Rule 20 of APCS (CCA) Rules, 1991, no disciplinary action had been commenced, the Tribunal held that no disciplinary proceedings were pending against the respondent, that pendency of disciplinary proceedings was no bar for considering the case of a Government servant for promotion to a higher post if he was otherwise suitable and came within the zone of consideration. The Tribunal also held that since the punishment imposed upon the respondent had been set aside, his case was required to be considered in accordance with the rules duly forwarding his name to the departmental promotion committee.

Aggrieved by the order of the A.P. Administrative Tribunal, the present writ petition is filed.

Before this Court, learned Government Pleader for Services II would contend that the Tribunal had erred in holding that no disciplinary action had commenced against the respondent when, in fact, disciplinary proceedings were pending against him. Learned Government Pleader would submit that the appellate authority had set aside the order of punishment only on the ground that the 3rd petitioner was not the competent authority or the disciplinary authority to impose the major penalty, under Rule 9 of APCS (CCA) Rules, 1991, of withholding two annual grade increments with cumulative effect, and the 3rd petitioner was directed to dispose of and conclude the disciplinary proceedings. Learned Government Pleader would contend that since the charges held proved, in the enquiry report, are grave in nature, the respondent does not deserve to have his case considered for promotion.

Learned Government Pleader would place before us, a copy of

G.O.Ms.No. 257 General Administration (Ser.C) Department dated 10.06.1999, which are the guidelines to be followed for considering cases of employees, against whom disciplinary or criminal proceedings are pending or whose conduct is under investigation, for promotion to the next higher category.

Para 5(B), of the guidelines in G.O.Ms.No. 257 dated 10.06.1999, classifies officers, who are facing enquiry, based on the nature of allegations or charges pending against them. Para 5(C) requires the suitability of officers, for inclusion in the panel of promotees, to be considered on an overall assessment based on the service record. Para 6 and 7, read thus:

“6. The appointing authority should consider and decide that it would not be against public interest to allow adhoc promotion to the officer concerned and this shall be decided with reference to the charge under enquiry. If the charge is one of moral turpitude, misappropriation, embezzlement and grave dereliction of duty then the appointing authority should consider as not in the public interest to consider adhoc promotion to such charged officer. But, however, if the charge is not a grave one but is a minor one, not involving moral turpitude, embezzlement and grave dereliction of duty then only in such cases the appointing authority should consider that it would not be against public interest to allow adhoc promotion because till then his record is clean with reference to ACRs, past punishment and reputation in the department as vouchsafed by the Head of the Department and Secretary to Government. The appointing authorities should strive to finalise the disciplinary cases pursuing them vigorously so that within two years the proceedings are concluded and final orders issued.

7. If the Officer concerned is acquitted, in the criminal prosecution on the merits of the case or is fully exonerated in the departmental proceedings, the adhoc promotion already made may be confirmed and the promotion treated as a regular one from the date of the adhoc promotion with all attendant benefits. In case the officer could have normally got his regular promotion from a date prior to the date of his adhoc promotion with reference to his placement in the Departmental Promotion Committee proceedings and the actual date of promotion of the person ranked immediately junior to him by the Departmental Promotion Committee, he would also be allowed his due seniority and benefit of notional promotion.”

It is clear therefrom that the appointing authority is empowered to consider and decide whether it would be in public interest to allow adhoc promotion to the officer concerned. If the charge is one of moral turpitude, misappropriation, dereliction of duty etc., the charge is grave and the appointing authority is required to consider the case as not in public interest. If the charge is minor, the appointing authority should consider it not against public interest to effect adhoc promotion. The discretion whether or not an officer, against whom disciplinary proceedings are pending, should be promoted to a higher

post on adhoc basis, is that of the appointing authority, who is required to consider several factors and keep larger public interest in mind while arriving at such a decision.

The discretion which the appointing authority is required to exercise is only after the departmental promotion committee finds the officer suitable for promotion and not prior thereto, for if the departmental promotion committee were to hold the employee not suitable for promotion the question of promoting such an employee, even on an adhoc basis, would not arise. Since the disciplinary proceedings, against the respondent, is pending, in accordance with the guidelines in G.O.Ms.No.257 dated 10.06.1999, and in case he fell within the zone of consideration, the case of the respondent ought to have been placed before the departmental promotion committee, for being considered for promotion to the next higher post. It was for the departmental promotion committee to consider his case along with others on the basis of the available records and in accordance with the rules. It is only if the departmental promotion committee finds the respondent eligible and suitable and recommends his case for the promotion would the appointing authority be required to exercise his discretion and take a decision as to whether the recommendations of the departmental promotion committee with regards promotion of such an officer, is required to be given effect to, even on an adhoc basis.

It is well settled that an officer who is found guilty of misconduct, and on whom punishment is imposed, is not entitled, as a matter of course, to be rewarded by promotion. An employee has no right to claim promotion and has only a right to be considered for promotion. Several factors are required to be borne in mind while considering an officer's case of promotion, the least of which is that the employee should have an unblemished service record. Such a requirement is the minimum expected to ensure a clean and efficient administration and to protect public interest. No employee who has been imposed punishment for proved misconduct can claim to be promoted as a matter of right and denial of promotion, in such circumstances, is not a penalty but a necessary consequence of his conduct. While considering an employee

for promotion, his whole record is taken into consideration including the penalty imposed on him. Denial of promotion, in such circumstances cannot be said to be illegal and unjustified. (**Union of India Vs. K.V.Jankiraman**)

Mere pendency of disciplinary proceedings, unless the rules otherwise provide, would not disentitle an officer from being considered for promotion if he is otherwise eligible and falls within the zone of consideration, for such an employee cannot be said to have suffered a penalty necessitating non-consideration of his case for promotion during the rigor period of the punishment. Different procedures are adopted in such cases, one of which is the “sealed cover procedure” which is made applicable to the Central Government Employees. According to the learned Government Pleader, the applicable guidelines are those prescribed in G.O.Ms.No. 257 dated 10.06.1999, which does not disentitle an employee, against whom disciplinary proceedings are pending, from being considered for promotion.

While the aforesaid guidelines, in G.O.Ms.No. 257 dated 10.06.1999, confer a discretion on the appointing authority, the discretion is to be exercised after the employee's case is examined by the departmental promotion committee and he is recommended for promotion to the next higher category. No other rules or guidelines has been brought to our notice which would disentitle an officer, against whom disciplinary proceedings are pending, from being considered for promotion if he is otherwise eligible and falls within the zone of consideration. The A.P. Administrative Tribunal has merely directed that the respondent's case be placed before the departmental promotion committee for consideration for promotion to the next higher post. The order of the Tribunal does not suffer from any legal infirmity necessitating interference of this Court under Article 226 of the Constitution of India.

The Writ Petition is accordingly dismissed. There shall however be no order as to costs.

J.CHELAMESWAR, J

Dt: 09.11.2005

RAMESH RANGANATHAN, J

MRKR